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97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-855

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BUFFALO BILL DAM, RECLAMATION REFORM, AND PAPAGO INDIAN WATER RIGHTS

COMPLETED

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SEPTEMBER 22, 1982.—Ordered to be printed

Mr. UDALL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1409]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1409) to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

TITLE I

CONSTRUCTION OF DAM MODIFICATIONS

SEC. 101. The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall in-

clude raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, replacing the existing Shoshone Powerplant, enlarging a spillway, construction of a visitor's center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: Provided, That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract.

CONSERVATION AND FISH AND WILDLIFE

SEC. 102. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the modification of Buffalo Bill Dam and Reservoir shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended.

COORDINATION WITH OTHER LAWS

SEC. 103. The modifications of the Buffalo Bill Dam and Reservoir shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Revenues for the return of costs allocated to power shall be determined by power rate and repayment analysis of the Pick-Sloan Missouri Basin program. Repayment contracts for the return of costs allocated to municipal and industrial water and irrigation water supplies exclusive of State participation pursuant to section 107 shall be negotiated under provisions of the Reclamation Project Act of 1939 (53 Stat. 1198) or the Water Supply Act of 1958 (72 Stat. 320), as amended, and shall be prerequisite to the initiation of construction of facilities for this purpose. Costs allocated to environmental quality shall be nonreimbursable and nonreturnable under Federal reclamation law.

TRANSMISSION INTERCONNECTIONS

SEC. 104. (a) The Secretary of Energy is authorized to construct, operate, and maintain transmission interconnections as required physically to interconnect the hydroelectric powerplant authorized by this title to existing power systems as he determines necessary to accomplish distribution and marketing of the power generated.

(b) Hydroelectric power generated by the facility constructed pursuant to this title shall be delivered to the Secretary of Energy for distribution and marketing. Such facility shall be financially integrated with the Western Division, Pick-Sloan Missouri Basin program power system and the power marketed under rate schedules in effect for such system.

INTEREST

Sec. 105. The interest rate used for computing interest during construction and interest on the unpaid balance of the reimbursable costs of the Buffalo Bill Dam and Reservoir modifications shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction of the unit is commenced, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for fifteen years from date of issue.

AUTHORIZATION FOR APPROPRIATIONS

Sec. 106. (a) There is hereby authorized to be appropriated beginning October 1, 1982, for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels) plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation, maintenance, and replacement of the works of said modifications: Provided, That, such sums authorized to be appropriated for construction, operation, maintenance, and replacement shall be reduced by the amounts contributed to the project under the provisions of section 107 of this title.

(b) There is also authorized to be appropriated beginning October 1, 1982, such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplant authorized by this title, together with such sums as may be required for operation and maintenance of the works authorized by section 104(a).

CONTRACTS AUTHORITY

Sec. 107. The Secretary of the Interior is authorized to enter into contracts with the State of Wyoming, upon such terms and conditions as he deems necessary, for the division of additional water impounded by the modifications, the sharing of revenues from the modifications, and the sharing of the costs of construction, operation, maintenance, and replacement of the Buffalo Bill Dam and Reservoir modifications.

TITLE II

SHORT TITLE

Sec. 201. This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371), hereinafter referred to as "Federal reclamation law". This title may be referred to as the "Reclamation Reform Act of 1982".

DEFINITIONS

Sec. 202. As used in this title:

(1) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States in-

cluding normal operation, maintenance, and replacement costs pursuant to Federal reclamation law.

(2) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(3)(A) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act: Provided, That operation, maintenance, and replacement charges required under Federal reclamation law, including this title, shall be collected in addition to the full cost charge.

(B) The interest rate used for expenditures made on or before the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing, marketable issues sold by the Treasury during the fiscal year in which the expenditures by the United States were made, but shall not be less than seven and one-half per centum per annum.

(C) The interest rate used for expenditures made after the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—

(i) the rate as of the beginning of the fiscal year in which expenditures are made on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(ii) the weighted average yield on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(4) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152).

(5) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(6) The term "landholding" means total irrigable acreage of one or more tracts of land situated in one or more districts owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(7) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than twenty-five natural persons.

(8) The term "project" means any reclamation or irrigation project, including incidental features thereof, authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(9) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five natural persons or less.

(10) The term "recordable contract" means a contract between the Secretary and a landowner in writing capable of being recorded under State law providing for the sale or disposition of lands held in excess of the ownership limitations of Federal reclamation law including this title.

(11) The term "Secretary" means the Secretary of the Interior.

NEW OR AMENDED CONTRACTS

SEC. 203. (a) The provisions of this title shall be applicable to any district which—

(1) enters into a contract with the Secretary subsequent to the date of enactment of this Act;

(2) enters into any amendment of its contract with the Secretary subsequent to the date of enactment of this Act which enables the district to receive supplemental or additional benefits; or

(3) which amends its contract for the purpose of conforming to the provisions of this title.

(b) Any district which has an existing contract with the Secretary as of the date of enactment of this Act which does not enter into an amendment of such contract as specified in subsection (a) shall be subject to Federal reclamation law in effect immediately prior to the date of enactment of this Act, as that law is amended or supplemented by sections 209 through 230 of this title. Within a district that does not enter into an amendment of its contract with the Secretary within four and one-half years of the date of enactment of this Act, irrigation water may be delivered to lands leased in excess of a landholding of one hundred and sixty acres only if full cost, as defined in section 202(3)(A) of this title, is paid for such water as is assignable to those lands leased in excess of such landholding of one hundred and sixty acres: Provided, That the interest rate used in computing full cost under this subsection shall be the same as provided in section 205(a)(3).

(c) In the absence of an amendment to a contract, as specified in subsection (a), a qualified recipient or limited recipient may elect to be subject to the provisions of this title by executing an irrevocable election in a form approved by the Secretary to comply with this title. The district shall thereupon deliver irrigation water to and

collect from such recipient, for the credit of the United States, the additional charges required by this title and assignable to the recipient making the election.

(d) Amendments to contracts which are not required by the provisions of this title shall not be made without the consent of the non-Federal party.

LIMITATION ON OWNERSHIP

SEC. 204. Except as provided in section 209 of this title, irrigation water may not be delivered to—

(1) a qualified recipient for use in the irrigation of lands owned by such qualified recipient in excess of nine hundred and sixty acres of class I lands or the equivalent thereof; or

(2) a limited recipient for the use in the irrigation of lands owned by such limited recipient in excess of six hundred and forty acres of class I lands or the equivalent thereof;

whether situated in one or more districts.

PRICING

SEC. 205. (a) Notwithstanding any other provision of law, any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water at full cost as defined in section 202(3) to:

(1) a landholding in excess of nine hundred and sixty acres of class I lands or the equivalent thereof for a qualified recipient,

(2) a landholding in excess of three hundred and twenty acres of class I land or the equivalent thereof for a limited recipient receiving irrigation water on or before October 1, 1981; and

(3) the entire landholding of a limited recipient not receiving irrigation water on or before October 1, 1981: Provided, That the interest rate used in computing full cost under this paragraph shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of—

(A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(B) the weighted average of market yields on all interest-bearing, marketable issues sold by the Treasury

during the fiscal year preceding the fiscal year in which the expenditures are made, or the date of enactment of this Act for expenditures made before such date of enactment.

(b) Any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (a) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, or, in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to section 208 of this title.

(c) Notwithstanding any extension of time of any recordable contract as provided in section 209(e) of this title, lands under recordable contract shall be eligible to receive irrigation water at less than full cost for a period not to exceed ten years from the date such recordable contract was executed by the Secretary in the case of contracts existing prior to the date of enactment of this Act, or five years from the date such recordable contract was executed by the Secretary in the case of contracts entered into subsequent to the date of enactment, or the time specified in section 218 for lands described in that section: Provided, That in no case shall the right to receive water at less than full cost under this subsection terminate sooner than 18 months after the date on which the Secretary again commences the processing or the approval of the disposition of such lands.

CERTIFICATION

SEC. 206. As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in section 203, each landowner and lessee within such district shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this title including a statement of the number of acres leased, the term of any lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee to submit to him, for his examination, a complete copy of any such lease executed by each of the parties thereto.

EQUIVALENCY

SEC. 207. Upon the request of any district, the ownership and pricing limitations imposed by this title shall apply to the irrigable lands classified within such district by the Secretary as having class I productive potential or the equivalent thereof in larger acreage of less productive potential, as determined by the Secretary, taking into account all factors which significantly affect productivity, including but not limited to topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability.

OPERATION AND MAINTENANCE CHARGES

SEC. 208. (a) The price of irrigation water delivered by the Secretary pursuant to a contract or an amendment to a contract with a district, as specified in section 203, shall be at least sufficient to recover all operation and maintenance charges which the district is obligated to pay to the United States.

(b) Whenever a district enters into a contract or requests that its contract be amended as specified in section 203, and each year thereafter, the Secretary shall calculate such operation and maintenance charges and shall modify the price of irrigation water delivered under the contract as necessary to reflect any changes in such costs by amending the district's contract accordingly.

(c) This section shall not apply to districts which operate and maintain project facilities and finance the operation and maintenance thereof from non-Federal funds.

DISPOSITION OF EXCESS LANDS

SEC. 209. (a) Irrigation water made available in the operation of reclamation project facilities may not be delivered for use in the irrigation of lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, unless and until the owners thereof shall have executed a recordable contract with the Secretary, in accordance with the terms and conditions required by Federal reclamation law, requiring the disposal of their interest in such excess lands within a reasonable time to be established by the Secretary. In the case of recordable contracts entered into prior to the date of enactment of this Act, such reasonable time shall not exceed ten years after the recordable contract is executed by the Secretary. In the case of recordable contracts entered into after the date of enactment of this Act, except as provided in section 218, such reasonable time shall not exceed five years after the recordable contract is executed by the Secretary.

(b) Lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, which, on the date of enactment of this Act, are, or are capable of, receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only—

(1) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or

(2) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(c) Recordable contracts existing on the date of enactment of this Act shall be amended at the request of the landowner to conform with the ownership limitations contained in this title: Provided, That the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) Any recordable contract covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the recordable contract. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as the Secretary may establish: Provided, That the Secretary shall recover for the owner the fair market value of the land unrelated to irrigation water deliveries plus the fair market value of improvements thereon.

(e) In the event that the owner of any lands in excess of the ownership limitations of Federal reclamation law has heretofore entered into a recordable contract with the Secretary for the disposition of such excess lands and has been prevented from disposing of them because the Secretary may have withheld the processing or approval of the disposition of the lands (whether he may have been compelled to do so by court order or for other reasons), the period of time for the disposal of such lands by the owner thereof pursuant to the con-

tract shall be extended from the date on which the Secretary again commences the processing or the approval of the disposition of such lands for a period which shall be equal to the remaining period of time under the recordable contract for the disposal thereof by the owner at the time the decision of the Secretary to withhold the processing or approval of such disposition first became effective.

(f) Excess lands which have been or may be disposed of in compliance with Federal reclamation law, including this title, shall not be considered eligible to receive irrigation water unless—

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years after their original disposal to comply with Federal reclamation law, including this title, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e).

WATER CONSERVATION

SEC. 210. (a) The Secretary shall, pursuant to his authorities under otherwise existing Federal reclamation law, encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients.

(b) Each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives.

(c) The Secretary is authorized and directed to enter into memorandums of agreement with those Federal agencies having capability to assist in implementing water conservation measures to assure coordination of ongoing programs. Such memorandums should provide for involvement of non-Federal entities such as States, Indian tribes, and water user organizations to assure full public participation in water conservation efforts.

RESIDENCY NOT REQUIRED

SEC. 211. Notwithstanding any other provision of law, irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them.

CORPS OF ENGINEERS PROJECTS

SEC. 212. (a) Notwithstanding any other provision of law, neither the ownership or pricing limitation provisions nor the other provisions of Federal reclamation law, including this title, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless—

(1) the project has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provision of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect.

REPAYMENT OF CONSTRUCTION CHARGES

SEC. 213. (a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district after the obligation of a district for the repayment of the construction costs of the project facilities used to make project water available for delivery to such lands shall have been discharged by a district (or by a person within the district pursuant to a contract existing on the date of enactment of this Act), by payment of periodic installments throughout a specified contract term, including individual or district accelerated payments where so provided in contracts existing on the date of enactment of this Act.

(b)(1) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the ownership or full cost pricing limitation of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located.

(2) Any certificate issued by the Secretary prior to the date of enactment of this Act acknowledging that the landholding is free of the acreage limitation of Federal reclamation law is hereby ratified.

(c) Nothing in this title shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district.

TRUSTS

SEC. 214. The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district *which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the ownership and pricing limitations imposed by Federal reclamation law, including this title.*

TEMPORARY SUPPLIES OF WATER

SEC. 215. (a) Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which receive only a temporary, not to exceed one year, supply of water made possible as a result of—

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration.

(b) The Secretary shall have the authority to waive payments for a supply of water described in subsection (a).

INVOLUNTARY FORECLOSURE

SEC. 216. Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise: Provided, That such lands were eligible to receive irrigation water prior to such transfer of title or the mortgaged lands became ineligible to receive water after the mortgage is recorded but before it is acquired by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of mortgage: Provided further, That if, after acquisition, such lands are not qualified under Federal reclamation law, including this title, they shall be furnished temporarily with an irrigation water supply for a period not exceeding five years from the effective date of such an acquisition, delivery of irrigation water thereafter ceasing until the transfer thereof to a landowner qualified under such laws: Provided further, That the provisions of section 205 of this title shall be applicable separately to each acquisition under this section if the lands are otherwise subject to the provisions of section 205.

ISOLATED TRACTS

SEC. 217. Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which are isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed such ownership limitations.

CENTRAL ARIZONA PROJECT

SEC. 218. Lands receiving irrigation water pursuant to a contract with the Secretary as authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521 et seq.) which *are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, for a period of time not to exceed 10 years from the date such lands are capable of being served with irrigation water, as determined by the Secretary.*

RELIGIOUS OR CHARITABLE ORGANIZATIONS

SEC. 219. An individual religious or charitable entity or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the Internal Revenue Code of 1954, as amended, and which owns, operates, or leases any lands within a district shall be treated as an individual under the provisions of this title regardless of such entity or organization's affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if—

(1) the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;

(2) said land is operated by said individual religious or charitable entity or organization (or subdivisions thereof); and

(3) no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual.

CONTRACT REQUIRED

SEC. 220. Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such irrigation water would not have been available without the operations of those facilities, may be used for irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such irrigation water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of Federal reclamation law.

WAIVER OF SOVEREIGN IMMUNITY

SEC. 221. Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated.

EXCESS CROP RESTRICTIONS

SEC. 222. (a) Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation water. The report shall include—

(1) data delineating the production of surplus crops on lands served by irrigation water;

(2) the percentage of participation of farms served by irrigation water in set-aside programs, by acreage, crop, and State;

(3) the feasibility and appropriateness of requiring the participation in acreage set-aside programs of farms served by irrigation water and the costs of such a requirement; and

(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

(b) In addition, notwithstanding any other provision of law, in the case of any Federal reclamation project authorized before the date of enactment of this Act, any restriction prohibiting the delivery of irrigation water for the production of excess basic agricultural commodities shall extend for a period no longer than ten years after the date of the initial authorization of such project.

SMALL RECLAMATION PROJECTS ACT

SEC. 223. Section 5(c)(2) of the Act of August 6, 1956 (43 U.S.C. 422e), is amended by striking out "by any one owner in excess of one hundred and sixty irrigable acres;" and inserting in lieu thereof "by a qualified recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of nine hundred and sixty irrigable acres, or by a limited recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres;".

ADMINISTRATIVE PROVISIONS

SEC. 224. (a) The provisions of Federal reclamation law shall remain in full force and effect, except to the extent such law is amended by, or is inconsistent with, this title.

(b) Nothing in this title shall repeal or amend any existing statutory exemptions from the ownership or pricing limitation of Federal reclamation law.

(c) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

(d) Section 3 of the Act of July 7, 1970 (43 U.S.C. 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(e) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, may be sold at its fair market value without regard to any

other provision of this title or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e): Provided, That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(f) The first proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270), as amended by the Act of August 7, 1946 (60 Stat. 866, 867) is hereby repealed.

VALIDATION

SEC. 225. The provisions of any contract entered into prior to October 1, 1981, by the Secretary with a district, which define project or nonproject water, or describe the delivery of project water through nonproject facilities or nonproject water through project facilities to lands within the district, are hereby authorized and validated on the part of the United States.

PUBLIC PARTICIPATION

SEC. 226. Section 9 of the Reclamation Project Act of 1939 (43 U.S.C. 485h) is amended by adding at the end the following new subsection:

"(f) No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall—

"(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

"(2) provide an opportunity for submission of written data, views and arguments, and shall consider all substantive comments so received.".

LEASING REQUIREMENTS

SEC. 227. Notwithstanding any other provision of Federal reclamation law, including this title, lands which receive irrigation water may be leased only if the lease instrument is—

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options: Provided, however, That leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years.

REPORTING

SEC. 228. Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require.

COMMISSIONER OF RECLAMATION

SEC. 229. The Act of May 26, 1926 (44 Stat. 657) is amended by adding the words "by and with the advice and consent of the Senate" after the word "President".

SEVERABILITY

SEC. 230. If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

TITLE III

CONGRESSIONAL FINDINGS

SEC. 301. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 302. For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 303. (a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the

efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

(4) There are authorized to be appropriated up to $3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraphs (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

(1) the ~~actual~~ replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall

give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72–240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 305. (a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suit-

able for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In

acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of

water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.

OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OR CLAIMS OF PAPAGO TRIBE AND ALLOTTEES

SEC. 307. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the City of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the City of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

(B) the Secretary and the City of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active

Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

SEC. 308. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have *been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.*

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 309. (a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of $15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 310. The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

SEC. 311. Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own *behalf, shall not be barred if the complaint is filed prior to January 1, 1985.*

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 312. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

(1) price guarantees, loan guarantees, or purchase agreements,
(2) loans, and
(3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.

COOPERATIVE FUND

SEC. 313. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305.

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) $5,250,000 to be contributed as follows:

(i) $2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) $1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) $1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the 3-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the 1-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the 1-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and

(B) Such sums up to $16,000,000 (adjusted as provided in paragraph (2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the 12-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title—

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

COMPLIANCE WITH BUDGET ACT

SEC. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

SHORT TITLE

SEC. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

And the Senate agree to the same.

MORRIS K. UDALL,
ABRAHAM KAZEN, Jr.,
JOHN F. SEIBERLING,
GEORGE MILLER,
TONY COELHO,
MANUEL LUJAN, Jr.,
DON H. CLAUSEN,
CHARLES PASHAYAN, Jr.,
Managers on the Part of the House.

JAMES A. MCCLURE,
MARK O. HATFIELD,
PETE V. DOMENICI,
MALCOLM WALLOP,
JOHN W. WARNER,
HENRY M. JACKSON,
J. BENNETT JOHNSTON,
WENDELL H. FORD,
Managers on the Part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the bill (S. 1409) to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate amendment to the House amendment struck out all of the House amendment and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the Senate amendment and the House amendment. The differences between the Senate amendment, the House amendment, and the substitute agree to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreement reached by the conferees, and minor drafting and clarifying changes.

TITLE I

Except for conforming amendments, the text of Title I, to authorize the Secretary of the Interior to construct, operate, and maintain modifications of the existing Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri River Basin program, Wyoming, as passed by the House on August 17, 1982, is identical to the text of S. 1409 as passed by the Senate on June 22, 1982 (S. Rept. 97-420).

TITLE II

Title II, as approved by the House, incorporates the language of HR 5539, a bill to amend and supplement Federal reclamation law, which passed the House on May 6, 1982. The Senate amendment to Title II substitutes in its entirety the language of the amendment to HR 5539 which was approved by the Senate on July 16, 1982.

Existing law places a limit of 160 acres on the quantity of irrigable land in a single ownership to which Federal reclamation water may be supplied. (The law has been interpreted to permit the delivery of water to 320 acres for lands owned by a husband and wife.)

Irrigators who receive water from Federal reclamation projects are required to repay the construction costs of the project which are allocable to irrigation over a period of years without interest. In computing the repayment obligation of the irrigators, the Secretary also takes into consideration their ability to pay and may reduce the obligation accordingly. Not charging interest on the repayment obligation and the consideration of ability to pay in computing that obligation have come to be regarded as a subsidy to the irrigators.

Both the House and Senate versions of Title II provide for an increase in the basic ownership limitations and reduce the subsidy for larger farming operations.

The Senate amendment changed the acreage limitation provision of the basic law for all districts. The amendment approved by the House made the new limitation applicable only to new irrigation districts entering into contracts with the Secretary after the date of enactment, those which receive supplemental benefits after the date of enactment which were not previously authorized by law; to districts having existing contracts which agreed to amend those contracts to conform with certain provisions of the new law; and to individuals who desire to take advantage of the new law even though the contracting entity does not do so. Both versions provided for the application of an equivalency formula which permits an increase in the basic acreage limitation for those lands of less productive capability. However, as to districts having an existing contract, the application of equivalency was also made contingent upon the agreement of the district to an amendment to its contract in the amendment approved by the House.

The conferees agreed that the benefits of the new law, which include an ownership limitation of 960 acres and the application of equivalency, should be available to irrigators in districts having existing contracts only if the district agrees to amend its contract to provide for the reduction of the subsidy for larger farming operations in excess of 960 acres and to comply with certain other provisions of the new law. Individuals in the district may make such an election if the district does not do so. The 960 acre ownership limitation would apply to all districts entering into new contracts, and to those which amend their contracts to receive new or supplemental benefits not existing on the date of enactment, as would all of the requirements which the new law would impose upon the district.

The bill approved by the conference committee also reduces the subsidy for leased lands in those districts not amending their contracts. The conferees agreed that the larger farming operations in such districts which lease lands over and above the basic ownership limitation of 160 acres should not, in the future, receive the subsidy benefit for the additional leased lands. The provision is made effective four-and-one-half years from the date of enactment in order to give districts desiring to amend their contracts sufficient time to comply with the requirements of State law for effecting such amendments and to the Federal requirement that the contracts and amendments be confirmed by a court of competent jurisdiction.

The conferees intend to make it clear that the provisions of Sections 209 through Section 230 of the conference report are intended to be of general application and are, therefore, effective immediately upon enactment and are to be applied to any district or individual, whether or not the district amends its contract pursuant to the new law.

The major differences between the House amendment, the Senate amendment, and the resolution of those differences in the substitute agreed to in the conference are described below:

OWNERSHIP AND SUBSIDY LIMITATIONS

House: The House amendment establishes an ownership limitation of 960 acres for individuals and corporations benefiting 18 or fewer individual shareholders. These operators are subject to a 960-acre limitation on the amount of land owned or leased which can receive water at subsidized rates. Under the House amendment, the ownership limitation for corporations benefiting more than 18 shareholders is 960 acres. Those corporations benefiting more than 18 shareholders, which were receiving water on or before October 1, 1981, will pay full cost for water delivered to lands in excess of 160 acres. Corporations benefiting more than 18 shareholders not receiving water on or before that date will pay full cost for water delivered to all lands.

Senate: The Senate amendment establishes an ownership limitation, as well as a limitation on the amount of land which can receive subsidized water, of 1,280 acres for individuals and legal entities benefiting 25 or fewer individuals. The ownership limitation as well as the limitation on subsidized water for legal entities benefiting more than 25 individuals is 640 acres.

The conferees agreed upon an ownership and subsidy limitation of 960 acres for individuals and legal entities benefiting 25 or fewer individuals and an ownership limitation of 640 acres and a subsidy limitation of 320 acres for legal entities benefiting more than 25 individuals. However, the subsidy for the first 320 acres receiving water would be available only to those larger legal entities which were receiving, or had received, project water on or before October 1, 1981. Such larger legal entities which had not received water from a Federal reclamation project on or before that date would pay full cost for irrigation water delivered to all lands.

INTEREST RATE

House: The House amendment establishes an interest rate formula to be applied in computing full cost. That formula is the weighted average rate of all Treasury obligations issued during the fiscal year in which expenditures were made for each project. The rate will vary from project to project, but in no event will the rate be less than 5 percent.

Senate: The Senate amendment establishes an interest rate formula to be applied in computing full cost which is the arithmetic average of: (1) the average interest rate on all outstanding Treasury obligations of at least fifteen years' duration; and (2) the weighted average of all new Treasury obligations issued in the year preceding the year in which expenditures were made or the date of enactment, whichever is later. This formula currently results in an interest rate of approximately 11⅝ percent.

The conferees adopted a full cost formula which blends the formula in the House bill and the Senate amendment. The House formula would be applied to expenditures made prior to the date of enactment with a provision that the interest rate be not less than 7½% in any event. For expenditures made subsequent to the date of enactment, the formula contained in the Senate amendment would be applied. Legal entities having 25 or fewer individuals. However, larger legal entities which had not been receiving water from a project on or before October 1, 1981, would be charged full cost at the rate provided in the Senate amendment for all lands irrigated. Full cost will be calculated on a district by district basis.

CERTIFICATION

House: The House amendment provides that districts entering into new contracts or amending their contracts shall require each landowner and lessee within the district to furnish to the district a certificate that they are in compliance with the provisions of the Act. The Secretary may require submission to him of an executed copy of any lease for his examination.

Senate: The Senate amendment has no directly comparable provision. The Senate amendment does impose certain requirements on leasing.

The conferees agreed upon a provision which requires certification of compliance, including the number of acres leased, the term of the lease and that the rent reflects the reasonable value of the irrigation water. The conferees also agreed to a provision which requires that leases be written and for a term of not more than 25 years in the case of perennial crops and 10 years as to all others.

EQUIVALENCY

House: The House amendment provides for the application of an equivalency formula to lands of lesser productive potential within a district which enters into a new or amended contract.

Senate: The Senate amendment provides for a similar equivalency formula which would apply to all districts upon their request.

The conferees agreed that equivalency should be applied only as to those districts which agree to an amendment to their contracts as required to gain the benefit of the increased acreage limitations. The conferees noted that the Bureau of Reclamation has adopted a system of classification of lands within projects, but intends that the Bureau have flexibility to implement any new system of classification which it might develop. Furthermore, the conferees are aware of the fact that there exists statutory authorization for the application of an equivalency formula to a number of existing Federal reclamation projects. Enactment of this legislation is not intended to alter in any way either the application of equivalency to those projects, or the manner in which it has been applied.

PAYOUT

House: The House amendment provides that the acreage ownership limitation shall not apply to lands in a district after the repayment obligation of the district has been discharged by payment of periodic installments pursuant to the terms of the repayment contract. In addition, the acreage ownership limitation would not only apply to lands in a district after the repayment obligation of the district has been discharged through accelerated payments where so provided in a repayment contract existing on the date of enactment of this Act. Repayment by individuals would also be allowed where provided in a repayment contract existing on the date of enactment.

Senate: The Senate amendment is essentially identical to the House amendment except in two respects. First, the Senate amendment allows accelerated repayment after 95 percent of the repayment obligation has been paid and a pattern of family farming has been established, regardless of whether the repayment contract provides for accelerated repayment. Second, the Senate amendment provides that a district or individual receiving a Rehabilitation and Betterment loan may avoid application of the acreage ownership limitation by agreeing to repay the loan pursuant to the Small Reclamation Projects Act. The Small Reclamation Projects Act provides for an interest rate of approximately 9⅝ percent.

The provision approved by the conferees is essentially that contained in the House amendment. The conferees recognize that Rehabilitation and Betterment loans are considered as operation and maintenance costs. By adopting the House provision, the conferees do not intend to imply that either existing or future Rehabilitation and Betterment loans subject districts to the extension of the application of the acreage limitations after repayment of construction charges. The conferees also wish to make it clear that a district will not be relieved of liability for the payment of applicable operation and maintenance charges after its repayment obligation has been discharged.

WAIVER OF SOVEREIGN IMMUNITY

House: The House amendment gives the consent of the United States to be sued to determine the rights of any entity which is a party to a reclamation contract with the United States. The provision is a waiver of the sovereign immunity of the United States.

Senate: The Senate amendment provides an identical waiver of sovereign immunity. In addition, the Senate provision states that a court, if it determines it appropriate based on the evidence, including written representations concerning the application of the federal reclamation law, may reform the contract.

The conferees agreed to the House language. In taking this action, the conferees wish to make it clear that the actions of the conference committee should not be taken as prejudicial to any particular form of evidence or remedy under existing law, but rather the applicable rules of evidence and the applicable remedies should be employed by any court entertaining a suit brought to determine the rights of any party to a reclamation contract with the United States.

OPERATION AND MAINTENANCE CHARGES

House: The House amendment requires that all new and amended contracts provide that the price of project water shall be at least sufficient to recover all O & M charges which the district is obligated to pay to the United States. Each year the Secretary shall calculate such O & M charges and modify the price of project water accordingly. This provision does not apply to districts which operate and maintain project facilities without the benefit of Federal funds.

Senate: The Senate amendment has no comparable provision.

The conferees adopted a provision which would be applicable to all new contracts, contracts amended to receive additional or supplemental benefits after the date of enactment, and to districts electing to amend their contracts to take advantage of the benefits of the new law and to individuals electing to be subject to the new law.

APPLICATION OF FULL COST TO EXCESS LANDS

House: Under the House amendment, the subsidized rate is applicable to the first 960 acres of each farm operation whether or not the land is under recordable contract.

Senate: The Senate amendment allows the delivery of water at subsidized rates to excess lands under recordable contract.

The conferees agreed upon a provision which would permit delivery of water at subsidized rates for a period of ten years from the date the contract was executed as to recordable contracts entered into prior to the date of enactment and for a period of five years from the date of the execution as to recordable contracts executed subsequent to the date of enactment. Any extension of time for the disposal of lands under recordable contract is not to be considered as also extending the period of time in which subsidized water may be delivered to the lands under recordable contract since that water shall be delivered at the subsidized rate, for a period not less than 18 months from the date of enactment, or the date when the Secretary again commences approval of sales under recordable contract in those cases in which he has withheld approval. A special provision was adopted for lands to be placed under recordable contracts in the Central Arizona Project, as noted below.

APPLICABILITY/EXEMPTIONS

House: The House amendment provides for several exemptions from the ownership limitations, but would retain the limitations on subsidy if they were otherwise applicable.

Senate: The Senate amendment provides for similar exemptions from both the ownership and subsidy limitations. The Senate amendment also provides an exemption from ownership and subsidy limitations for lands which will receive a substitute water supply from a reclamation project and which will be required, by contract, to decrease groundwater pumping in an amount equal to the amount of water received from the federal project.

The conferees agreed upon a provision which blends the intent of the House and Senate amendments.

The conferees also agreed upon a provision which would apply the ownership and pricing provisions applicable to recordable contracts executed for lands in the Central Arizona Project. The provisions limit the delivery of water to such lands at the subsidized rate for a period of ten years from the date the Secretary finds that the lands are capable of being served with irrigation water.

WATER CONSERVATION

House: The House amendment requires a water conservation program applicable to districts which enter into new or amended contracts. The program must contain definite goals and meet specific requirements. If a State agricultural or resources agency determines that a district is wasting irrigation water, the Secretary is authorized to impose a surcharge for water service. The House amendment also provides for coordination of Federal water conservation programs among Federal agencies with involvement of non-Federal entities.

Senate: The Senate amendment directs the Secretary, pursuant to his existing authorities, to encourage prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water.

The conferees adopted a provision which incorporates the language of the Senate amendment and modified the provisions of the House amendment. The provision imposes an obligation upon the districts to adopt a water conservation program and a timetable for its implementation. The conservation program shall not be required to be a part of the district's repayment or water service contract. The provision also includes the language of the House amendment providing for coordination of Federal water conservation programs with the involvement of non-Federal entities.

PENALTIES

House: The House amendment contains civil penalty provisions including fines at twice the fair market value of delivered water, and $5,000 for each day of a violation. It also provides for enforcement of subpenas, and penalties for contempt of court.

Senate: The Senate amendment has no similar provision.

The conference report deletes the House penalty provision. The conference committee believes that, given the certification requirement of the conference report and the criminal penalties under law which apply, such as those as to an individual who makes a false certification, together with other remedies available to the Secretary, there is no need for such a penalty provision.

VALIDATION

House: The House amendment provides for validation of contract clauses dealing only with commingled water as described in contracts entered into prior to October 1, 1981.

Senate: The Senate amendment provides for validation of contract provisions related to the acreage limitations. It provides for a Secretarial examination of circumstances surrounding the execution of a contract and a Secretarial determination of a request to validate contract provisions. The Secretary's decision is final unless disapproved by Congress within 90 days.

The conferees agreed to the House provision and deleted the Senate provision. The Senate provision was deleted as unnecessary after the conference committee adopted the provision validating repayment provisions of existing contracts.

SURPLUS CROPS

House: The House amendment provides that no water shall be delivered from a project authorized after the date of enactment of this Act to lands producing surplus crops for a period of ten years from the date water is first made available. No water may be delivered from projects authorized prior to the date of enactment of this Act to lands producing surplus crops for a period no longer than ten years after the date of the initial authorization of the project.

Senate: The Senate amendment provides that within one year the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to Congress a report on the production of surplus crops on acreage served by irrigation waters. The report shall include recommendations on the coordination of reclamation policy with agricultural policy regarding surplus crops.

The conferees agreed to adopt the Senate amendment and that portion of the House amendment relating to the effective date of the prohibition upon the delivery of water to lands producing surplus crops, applicable to projects authorized prior to the date of enactment.

AUDIT COMPLIANCE

House: The House amendment directs the Inspector General of the Department of the Interior to review all audit reports of the Bureau of Reclamation projects prepared since 1977 and to transmit recommendations based on that review to the Secretary and Congress within 90 days of enactment of this Act. No later than 270 days after enactment the Secretary shall implement all recommendations made by the Inspector General or inform the appropriate committee of Congress in writing of his reasons for not implementing the recommendations.

Senate: The Senate amendment has no comparable provision.

The conferees agreed to delete the House provision. The conferees are concerned that such a provision may constitute a redefinition of the statutory functions of the Inspector General and are, therefore, beyond the scope of the legislation.

SMALL RECLAMATION PROJECTS

The conferees agreed to a provision which would make the pricing limitations of the Small Reclamation Projects Act of August 6, 1956, comport with those of Title II of this Act.

The conferees intended that these pricing amendments to the Act of August 6, 1956, only be applied prospectively to contracts entered into after the date of enactment of this Act. Despite the exclusively prospective application of this change, the conferees questioned whether the distinction between existing and future small reclamation project contracts is based upon sufficient rationale and further whether such distinction is equitable. The conferees expressed the hope that this distinction would be the subject of Congressional scrutiny and review in the near future.

CORPS OF ENGINEERS EXEMPTION

The conferees agreed that the changes made in the language relevant to the Corps exemption of the House and Senate amendments to that in the conference report are and were intended to be of a conforming or technical nature and do not signify a change in substance.

CONFIRMATION OF APPOINTMENT OF COMMISSIONER OF RECLAMATION

The conferees also agreed to the provision of the Senate amendment which would require that the Commissioner of Reclamation be appointed by the President with the advice and consent of the Senate.

TITLE III—PURPOSE

The purpose of this title is to provide a fair and reasonable settlement of the water rights claims of the San Xavier Papago Indian Reservation and the Schuk Toak District of Sells Papago Indian Reservation with a minimum of social and economic disruption to the Indian and non-Indian communities in Tucson and eastern Pima County.

Under the terms of this title, the Papago Tribe is guaranteed an annual supply of water from specified sources. To coordinate water resource planning and management with other water users in the area, the Secretary will establish a water management plan for the Papago Tribe that is consistent with State planning and management.

Acquisition and delivery of water to the Papago Tribe is contingent upon the Tribe's taking action to petition for dismissal of pending legal action, and releasing claims to water from the Tucson and eastern Pima County area other than water as provided in the Act. The settlement contained in this title will remove the cloud on title of non-Indian water users and enhance regional water resource planning and management.

The allocation of water resources to the Papago Tribe under this title is uniquely suited to the geographic, social and economic characteristics of the area and is not intended to be applied to any other Indian water rights claims in other areas, within or without the State of Arizona.

BACKGROUND AND NEED

The San Xavier Papago Reservation and the Schuk-Toak District of the Sells Papago Reservation are located in eastern Pima County, adjacent to the Tucson metropolitan area. The San Xavier Reservation lies primarily within the Upper Santa Cruz Basin, and the Schuk Toak District is located in the Avra/Aitar Valley Basin.

The San Xavier Papago Reservation occupies approximately 70,000 acres immediately southwest of the Tucson metropolitan area. The reservation was established by Executive Order signed by Ulysses S. Grant on July 1, 1874.

The Schuk Toak District was originally established by Executive Order signed by Woodrow Wilson on January 14, 1916. A later Executive Order, dated February 1, 1917, re-established the Schuk Toak District as part of the Sells Papago Reservation.

The Tucson metropolitan area, population 531,000, is one of the largest communities in the world that is solely dependent upon groundwater for its municipal and industrial water supply. That water supply comes from several well fields located in the Santa Cruz and Avra/Altar Valley basins.

These two basins also supply water used by copper mines operated by the Anaconda Company, Amax Copper Mines, Inc., the Pima Mining Company, the American Smelting and Refining Company and the Duval Copper Corporation. Mines located adjacent to the San Xavier Reservation produced 293,098 metric tons of copper in 1980; 24.8 percent of the total production of the United States in that year.

Other significant water users in eastern Pima County include the Cortaro-Marana Irrigation District, the Avra Valley Irrigation District and the Farmers Investment Company.

Data assembled by the Water Resources Coordination Committee (WRCC) a voluntary association of the major water users in eastern Pima County, indicate that consumptive use of groundwater pumped from these basins totaled 317,186 acre feet [1] in 1980. Projected consumption will exceed 400,000 acre feet in the year 2000 and 500,000 acre feet in the year 2030.[1]

The data also indicate a serious imbalance between existing supply and demand in these basins. Current demand for water exceeds renewable supplies by a ratio of more than four to one. The estimated overdraft of groundwater in 1980 was 225,706 acre feet.[1]

This imbalance has resulted in significant, long term declines in local groundwater levels. There is increasing concern that further decline in water levels will result in increased pumping costs, reduction in well capacity, diminished water quality and increased risk of land surface subsidence.

Recognition of the gravity of the groundwater overdraft problem has led water users in Tucson and eastern Pima County to implement significant conservation measures on a voluntary basis.

Agricultural users have greatly improved their irrigation efficiency by land leveling, ditch lining, and installation of pump-back systems. Further decrease in agricultural water used is anticipated through municipal and industrial development of currently irrigated land. According to data assembled by the WRCC, such development could reduce the amount of water consumption per acre by 75 percent.[1]

The mines have also realized considerable conservation through a variety of methods, such as recirculation of water, water recovery from tailings areas, use of settling methods prior to disposal of mine waste, reduction of water levels in flotation cells and utilization of natural seepage.

Municipal customers of the City of Tucson have, through voluntary conservation programs, reduced their average daily per capita demand from 205 gallons in 1974 to 140 gallons in 1979. The significance of this reduction is apparent by comparing this consumption rate with use in other major cities in the Southwest:

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[1] Statement of the Water Resources Coordination Committee to the Water and Power Resources Subcommittee of the U.S. House Committee on Interior and Insular Affairs, Mar. 13, 1981.

City:	*Per capita demand*
El Paso	173
Phoenix	220
Las Vegas	310
San Diego	179
Reno	189
Tucson	140

The Central Arizona Project, a Federal Reclamation Project that will bring Colorado River water from Parker Dam at Lake Havasu, to central and southern Arizona, will provide additional relief for the overdrawn groundwater basins in eastern Pima County. Delivery of water to Tucson and southern Arizona is expected in 1989 or 1990. Agricultural, mining and industrial water users who contract for CAP water will be required to reduce groundwater pumping on an acre foot for acre foot basis: for every acre foot of CAP water used, the subcontractors must reduce their groundwater pumping by an acre foot.

Strict management of groundwater resources is currently being implemented by the Arizona Department of Water Resources pursuant to a groundwater code enacted by the State legislature in 1980.[2]

The Code designates four geographic units as Active Management Areas (AMA). Within an AMA all present users of groundwater must file for a certificate of grandfathered pumping rights in order to perfect their right to pump groundwater. Only acreage irrigated any time during the 5 years prior to enactment of the Code may be irrigated. New uses will be allowed only pursuant to State permit. Moreover, the Code imposes limitations on the transportation of groundwater between sub-basins or away from any AMA.

The Tucson Active Management Area corresponds to the geographic boundaries of the Upper Santa Cruz Valley Basin and the Avra/Altar Valley Basin. The goal of the Tucson AMA is safe yield, that is, a balance between recharge and withdrawals, by January 1, 2025.

The Code also directs the Director of the Department of Water Resources to develop a series of management plans for agricultural, municipal and industrial water users in the AMA. The plans shall include provisions for a mandatory conservation program for all users, designed to achieve reductions in the levels of groundwater withdrawal. The management plans will be revised periodically to achieve the increasingly more rigid objectives set forth in the Code. The first plan for the Tucson AMA is scheduled to be issued in January 1984.

Conservation and planned management of groundwater resources and importation of water from the CAP are of paramount importance to the re-balancing of the groundwater basins in Pima County. Of equal importance is a final resolution of the water rights claims of the Papago Tribe to water from the Santa Cruz and Avra-Altar Valley Basins.

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[2] Ariz. Rev. Stats. Ann. 45 § 400 (1980).

The dramatic decrease in local groundwater tables has affected the Papago Tribe as well as non-Indian water users in eastern Pima County.

In 1975 the United States, on behalf of the Papago Tribe, filed suit against several major water users in the area, including the City of Tucson and the major mining and farming interests to protect the water resources of the San Xavier Reservation. That suit was consolidated with a second suit by the Papago Tribe against the same defendants.

On June 23, 1980, the Court ordered that a consolidated Amended Complaint be filed, naming as parties defendant all users of the surface and groundwaters of the Upper Santa Cruz River Basin. An Amended Complaint naming approximately 1,700 defendants was filed in *The United States and the Papago Indian Tribe* v. *City of Tucson,* consolidated cases, CIV 75-39 TUC (JAW) D. Ariz. Service of the Amended Complaint and interrogatories is in process, and numerous motions are presently pending before the Court.

In 1978, primarily in response to the Papago lawsuit, the Water Resources Coordination Committee (WRCC) of eastern Pima County was formed. Membership in the WRCC consists of representatives of the major water users in and around Tucson, including the City of Tucson, Pima County, the University of Arizona, and the Papago Tribe.

The purpose of the WRCC is to accumulate data on water supply and use, provide a forum for discussion of serious water related issues confronting the community, and develop a water resources plan to satisfy the present and future water needs of eastern Pima County without resort to litigation.

Since its inception, the WRCC has compiled data on present and projected future water supplies and demands, examined the quantity, quality and potential reuses of reclaimed water, developed a proposal for the study of water delivery to mines and farms that includes a mix of CAP water and reclaimed water, and assisted the Arizona Water Commission staff in developing a computer model designed to provide accurate evaluation of alternative water management plans.

Members of the WRCC have also taken an active part in analysis of aqueduct capacity, alignments, storage and termination point of the Tucson Aqueduct of the Central Arizona Project. The WRCC has participated in discussions and hearings regarding allocation of CAP water to Indian users and non-Indian users and has appeared as a witness at Congressional hearings on several occasions to discuss important water related issues.

Settlement of the Papago Tribe's suit against the water users in eastern Pima County is the most important issue facing water resources planners in the region. The WRCC has been an effective forum for the discussion of possible legislative solutions to the Papago Tribe's water rights claims. Although it was never the intent of the WRCC to become involved in negotiations surrounding this settlement, it has provided valuable data and counsel to the Tribe, the individual water users and to the appropriate Congressional committees.

The settlement contained in this title is the product of many years of discussion, deliberation and negotiation. Since 1975 many attempts have been made to resolve the water rights claims of the Papago Tribe legislatively. These legislative measures failed because they did not have the support of the community, the major water users or the Tribe.

After years of intense debate, and hearings in Washington, Tucson and Phoenix, the major water users in eastern Pima County and representatives of the Papago Tribe reached an agreement that all parties feel is a fair and reasonable settlement of the Tribe's claims to water in the Tucson Active Management Area and that part of the Santa Cruz Basin that is not within the AMA. The settlement effectively resolves the claims of the Tribe to waters from the Santa Cruz and Altar-Avra Valley Basin.

Sec. 301

Sec. 301 contains Congressional findings that:

The water rights claims of the Papago Tribe to waters of the basins surrounding Tucson and eastern Pima County are presently the subject of a lawsuit;

The pending and prospective suits may adversely affect the Indian and non-Indian economies in southern Arizona;

Parties to the suits, plaintiffs and defendants have diligently attempted to resolve the water rights claims of the Tribe by negotiation rather than by litigation;

It is in the best interests of the United States, the State of Arizona and its political subdivisions, and the Papago Tribe to resolve these claims by means of a legislative settlement;

The settlement contained in this title will allow flexible management of water resources in southern Arizona, encourage allocation of those resources to the highest and best uses, and enable the Papago Tribe to participate in a basinwide management plan for conservation and management of their water resources.

Sec. 302

Sec. 302 contains definitions of terms used in the title.

The House and Senate bills contained identical definitions except in two instances. The Senate bill added the word "reasonable" to the definition of the term "replacement costs" and defined the term "value" to mean the value attributed to the water based on the Tribe's anticipated or actual use of the water or its fair market value, whichever is greater. The Conference committee adopted the Senate provisions for these two terms.

Sec. 303

Sec. 303 authorizes the Secretary of the Interior to deliver, as soon as possible, but not later than 10 years after the date of enactment, 27,000 acre-feet of water from the Central Arizona Project (CAP) to the San Xavier reservation and 10,800 acre-feet from the same source to the Schuk Toak District of the Sells reservation. This water shall be of a quality suitable for agricultural use.

This section also provides that the Secretary, acting through the Bureau of Reclamation, shall improve and extend the existing irrigation system on the San Xavier Reservation, including deepening, lining, replacement or relocation of existing wells, and shall design and construct such new or additional canals, laterals, farm ditches and irrigation works on the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation as are necessary for the efficient distribution of the quantities of water required to be delivered under this section.

P.L. 90–537, the Colorado River Basin Project Act, authorizes construction of delivery and main canals, laterals and turnouts to the 160 acre tract for the distribution of water to Indian lands. Sections 303(a) (1)(B) and (2)(B) of this title authorize construction of more complete irrigation systems, which include sub-laterals and farm ditches.

The Senate bill provided an authorization ceiling of $3.5 million, indexed for inflation, for construction of those additional sub-laterals and farm ditches. The Conference Committee adopted the Senate ceiling provision as Section 303(a)(4).

Section 303(a)(3) directs the Secretary to establish a management plan for the San Xavier and Schuk Toak areas that will have the same effect as any management plan developed under State law, except as is necessary to be consistent with the provisions of this title.

It is the intent of this section that the management plan developed by the Secretary be able to require conservation measures for irrigation and non-irrigation uses, prevent waste, meter groundwater and require reasonable record keeping.

The goal of the Secretary's management plan shall be to ensure efficient, beneficial use of groundwater withdrawn by the Tribe. It is not intended that the authority to establish the management plan be construed to require any reduction in the amounts the Tribe is permitted to withdraw under this title.

Nothing in this title shall be construed to subject the Tribe's withdrawal of groundwater from the San Xavier Reservation and the Schuk Toak District of the Sells Reservation to any tax or fees levied or collected by the State of Arizona pursuant to State law.

Nothing in this title is intended to vest the State of Arizona with jurisdiction over water use by the Papago Tribe or within reservation areas.

Section 303(b)(1) provides that, if requested by the Tribe, the Secretary shall conduct a study to determine the availability and suitability of water resources within the Sells Papago Reservation, but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within the Sells Reservation.

Section 303(b)(2) provides that the Secretary, in cooperation with the Secretary of Energy or other appropriate agencies or officials, shall conduct a study to determine the availability of energy and the energy requirements resulting from enactment of this title and the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

Section 303(c) provides that the Papago Tribe shall have the right to withdraw groundwater from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of Section 306(a).

Section 303(e) provides that nothing contained in section 303(c) or section 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies or does not apply to groundwater.

Sec. 304

Section 304(a) provides that water shall be delivered from the main project works of CAP as provided in the agreement of December 11, 1980, except as otherwise provided in this Section.

Section 304(b) provides that whenever the Secretary is unable, during any year, to deliver from the main CAP project the quantity and quality of water specified, he is obligated to acquire and deliver an equivalent quantity of water from alternative sources described in this subsection. These alternatives include unused water from the CAP project or other waters within the Tucson Active Management Area (AMA) and that part of the Upper Santa Cruz Basin not within the AMA in the State of Arizona.

Section 304(c) provides that when the Secretary is unable to acquire and deliver quantities of water as required under Section 303(a), he shall pay damages to the Tribe. The measure of damages the Secretary is obligated to pay depends upon whether or not the delivery system has been completed. The Secretary's liability is either the replacement cost or the value of the undelivered water, as defined in this title.

Section 304(d) provides that the authority of the Secretary to acquire privately owned land or water rights is limited to consensual transactions only. It also provides that no private lands shall be acquired for purposes of acquiring water unless those lands have a recent history of receiving or being capable of receiving all of the water rights recognized by State law. A preference is established for acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition by the Secretary. The Secretary is prohibited from acquiring or disturbing water rights of any Indian tribe, band, group or community.

Section 304(e) provides that the Secretary, acting through the Bureau of Reclamation, shall design and construct such works or facilities as may be necessary to deliver water from the CAP project to the distribution systems within the two reservations.

Because delivery of CAP water, pursuant to this settlement, is a part of the final settlement of the named water rights claims of the Papago Tribe, the costs of operation and maintenance of the CAP facilities to Papago Reservations are made the obligation of the United States.

Construction of facilities to deliver CAP water to the water users in Tucson and Southern Arizona is authorized under Public Law 90-537. To contribute to the final resolution of the water rights claims of the Papago Tribe at San Xavier and the Schuk Toak District, a sum equal to that portion of the total cost of Phase B of the Tucson Aqueduct of the CAP which is allocable to the construction of facilities for the delivery of CAP water to Indian lands as described in Section 304(e)(1) is authorized to be appropriated under this title. The Secretary is required, under this subsection, to deliver water to the southern boundary of the San Xavier reservation and to the boundary of the Schuk Toak District at agreed upon points.

The sums authorized in Section 304(e)(2) shall not reduce, nor be treated as part of, funds authorized to be appropriated under other law, including the Colorado River Basin Project Act (Public Law 90-537).

Sec. 305

Section 305 establishes an obligation on the part of the Secretary to acquire quantities of reclaimed or treated water and deliver a specified quantity of water to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation. The water provided for under this section is in addition to the CAP or alternative waters provided for under Sections 303 and 304.

Section 305(a) provides that as soon as possible, but not later than ten (10) years from the date of enactment of this title, the Secretary shall acquire reclaimed or treated water from the City of Tucson in accordance with the agreement described in section 307(a)(1) and shall deliver annually 23,000 acre-feet of water suitable for agricultural use to the San Xavier Reservation and 5,200 acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

As provided in section 307(a), the City of Tucson will enter into an agreement with the Secretary subsequent to enactment of this title, wherein the City will agree to make reclaimed water immediately available to the Secretary to dispose of as he sees fit. The Senate bill made clear that the Secretary shall acquire the reclaimed water without payment to the City and the Conference adopted that provision.

Subsection (b)(1) permits the Secretary to voluntarily exchange the reclaimed water for other sources of water, or to use any other means to obtain the water necessary to fulfill his obligations under Section 305. The House bill mentioned specific alternative methods of acquiring water to deliver to the Tribe. The Senate bill provided that the Secretary could use any other means to meet his obligations under this section, without specifying particular methods. The Conference Committee adopted the Senate provision.

In order to deliver such water, the Secretary, acting through the Bureau of Reclamation, is authorized to construct and operate such facilities as may be appropriate. However, Section 305(b)(2) expressly prohibits construction of a single purpose, separate pipeline to deliver reclaimed water to the Papago lands, and Section 305(b)(3) states that to the extent possible, the Secretary shall use available unused capacity in the main project works of the Central Arizona Project. The Senate bill stated that the Secretary may utilize unused capacity in the Central Arizona Project system without reallocation of costs. The Conference Committee adopted the Senate provision.

Pursuant to Section 305(c) the Secretary may fulfill his Section 305 obligations by acquiring and delivering an equivalent quantity of water from specified sources, including, unused water from the CAP project, or privately owned water rights in surface or groundwater or reclaimed water within the Tucson Active Management Area (AMA) and that part of the Upper Santa Cruz Basin not within the area. Transportation of water within the AMA shall be governed by State law.

Section 305(d) provides that, if the Secretary is unable to acquire and deliver water as required under this section, he shall pay damages to the Tribe in an amount equal to the replacement costs of such quantities of water as are not delivered, where a delivery system has not been completed, or the value of such undelivered quantities of water, where a delivery system has been completed.

Sec. 306

Section 306 provides that the Secretary shall be required to carry out this obligations under Section 304(b), (c), and (e) and Section 305 only if the Papago Tribe agrees to limit pumping of groundwater under the San Xavier Reservation to not more than 10,000 acre-feet and under that portion of the eastern Schuk Toak District of the Sells Papago Reservation lying within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981, and the Tribe also agrees to comply with the management plan established by the Secretary.

The limitations imposed by this section do not apply to withdrawal from new or existing wells in either area which have a capacity of less than 35 gallons per minute and are used only for domestic and livestock purposes.

The conditional obligation of the Secretary under this subsection applies only to any obligation imposed by this title not otherwise assumed under the December 11, 1980 agreement. If the Tribe fails to agree to the limitations set forth in this subsection, the provisions of Section 304(b), (c), and (e) and Section 305 shall be without force or effect but the respective obligations of the parties under the December 11, 1980 agreement remain undiminished.

Section 306(b) provides that the obligations of the Secretary to constuct irrigation systems within the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation shall be conditioned on the Papago Tribe's agreeing to assume the costs of subjugation of the land which those irrigation systems are intended to benefit and to assume financial responsibility for the operation, maintenance, and replacement of such systems.

The responsibility of the Tribe for the operation, maintenance and replacement of the delivery systems shall be accomplished through the Tribe or its members or an entity designated by the Tribe, and shall be governed by the terms of Section 1 of the Act of August 1, 1914 (38 Stat. 270, 272; 25 U.S.C. 385). Maintenance charges shall be paid in accordance with regulations promulgated by the Secretary, and to the extent such charges are reimbursable out of tribal funds, they shall be apportioned in accordance with the benefits received by each individual Indian.

In no event will operation and maintenance charges under this section be attributed to land in or funds of districts of the Papago Reservation not receiving benefits from the provisions of this title.

Section 306(c) provides that the Tribe may devote water supplies under this title to any use, including but not limited to agricultural, municipal, and industrial, commercial, mining, and recreational use, whether within or outside the reservation, so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area. The Tribe may sell, exchange, or temporarily dispose of water but it may not permanently alienate any water right established under this title. Sale of water to non-Indians would be subject to recovery of appropriate charges.

Section 306(d) provides that nothing in this title shall be construed to establish whether or not reserved water may be put to use or sold for use off any reservation to which reserved water rights attach.

Sec. 307

Section 307(a) conditions the water delivery obligations of the Secretary on an agreement being reached by the City of Tucson and the Secretary regarding acquisition of 28,200 acre-feet of reclaimed water. The City is to make such quantities of water, treated to secondary standards, immediately available to the Secretary.

It is not intended that the City should agree to make available any more than 28,200 acre-feet of reclaimed water plus additional quantities of such water equivalent to evaporative losses from the delivery system for such water, or if further treatment is supplied by the Secretary, losses from such treatment.

As a further condition to the Secretary's obligations, the Secretary and the City of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company must agree to contribute to the Cooperative Fund authorized under Section 313 as provided by the terms of that section.

The obligations of the Secretary are contingent upon the agreement of Papago Tribe to file a stipulation for a voluntary dismissal with prejudice of the water suit filed by the United States on its behalf against the City of Tucson and other water users in the United States and the Papago Indian Tribe v. City of Tucson, consolidated cases, CIV 75-39 TUC (JAW) D. Ariz. In addition, paragraph (1)(c) of Section 307(a) requires that the Papago Tribe execute a waiver and release of any and all claims of water rights or injuries to water rights within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area; and that it execute a waiver and release of any and all future claims of water rights within these two areas.

Section 307(c) makes clear that nothing in Section 307 shall be construed as a waiver or release by the Papago tribe of any claim where such claim arises under this title.

Sec. 308

Section 308 directs the Secretary to carry out a study to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. If on the basis of this study it is determined that lands have been rendered unsuitable for agriculture, then the Secretary is authorized to exchange such lands for an equivalent acreage of land within the public domain of a quality equal to those diminished by the operation of the Painted Rock Dam. Such exchanged lands shall be held in trust for the Papago Tribe and shall be a part of the Gila Bend Reservation.

Section 308(e) provides that the Secretary may require the Papago Tribe to reimburse the United States for monies paid, if any, for flood easements on lands which the Secretary replaces by exchange. It is intended that only payments previously made by the Government for acquisition of flood easements of land, rather than costs of relocation, be considered under this section. In the event any such payments were in fact made, it is the intent of this section that the Secretary shall have full latitude to establish reasonable terms for the repayment of such monies.

Sec. 309

Section 309 provides for the establishment of a $15 million trust fund for the benefit of the Papago Tribe. Appropriated funds are to be paid to the governing body of the Tribe to be held in trust for the Tribe and invested in interest bearing deposits and securities.

The corpus of this trust account is to be held intact. The income accruing on the account may only be used for subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this title or any Act of Congress.

The income from this trust fund will enable the Tribe to subjugate lands for agricultural purposes anywhere within any district of the Papago Reservation, and expend monies related to on-reservation distribution systems anywhere within the Papago Reservation. This use of trust income is not restricted to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation or to development of water for agricultural purposes.

Appropriation of monies to establish the trust fund created under this section are a prerequisite to the effective waiver and release of claims the Tribe must execute pursuant to Section 307(a)(1)(D).

Sec. 310

Section 310 provides that the functions of the Bureau of Reclamation under this title shall be subject to the provisions of P.L. 93-638, the Indian Self-Determination and Education Assistance Act. It is the intent of this section that the provisions of P.L. 93–638 apply to any and all projects of the Bureau of Reclamation under this title which are not a part of the main project works of Phase II of the Tucson aqueduct but which involve improvement of existing systems or design and construction of distribution systems within the two reservation areas.

Sec. 311

Section 311 extends the period under the Federal statute of limitations (28 U.S.C. 2415) in which the United States, on behalf of the Papago Tribe, or the Tribe itself may bring a claim for damages to December 31, 1984. The one year time period for consummation of a contract with the City of Tucson and for execution of waivers by the Tribe extends beyond the present period of limitations provided in 28 U.S.C. 2415. In addition, the Papago Tribe is currently negotiating further settlement of water rights in water districts outside the area affected by this title. This extension will provide sufficient time to complete these negotiations or bring an appropriate suit.

Sec. 312

Section 312 provides that if a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects, the Papago Tribe should be given a priority in assistance for a portion of land adequate to contribute significantly to the Papago economy.

Sec. 313

Section 313 establishes a Fund, known as the Cooperative Fund, in the Treasury to provide the Secretary with a ready source of funds to pay the continuing costs related to his obligations to deliver wet water as required by sections 303, 304 and 305 of this title, to acquire and deliver alternative sources of water, or to make payments for damages as provided in Section 313(f) in the event he is unable to deliver the full amounts of water specified.

It is not intended that the Fund be used to pay for those features of this settlement, for example, design and construction of the distribution systems to receive water from the main project works of the Central Arizona Project authorized under Section 303(a); the water resources studies and energy studies authorized under Section 303(b); or the establishment of a water management plan which should be completed prior to the time water is delivered or 10 years has elapsed, as stated in Section 313(c).

It is intended that the Fund be created upon the date of enactment of this title and funded within 3 years of that date, with adjustments for interest which would have accrued after the first year. The corpus of the Fund is to be set aside for 10 years or such time as the main project works of the Central Arizona Project are completed and water is ready to be delivered to the Tribe. The level of authorizations contained in this section and the dormancy period are expected to create a Fund adequate to generate income sufficient to cover the anticipated costs of water delivery under this title.

Consultation with officials of the Department of the Interior resulted in a determination that a Fund of $10.5 million should generate sufficient monies to pay costs related to delivery of water for a period of several years under this title if the Central Arizona Project is completed to Tucson in 1990, as presently scheduled. Based on this assumption, an initial funding level is authorized in Section 313(b). $5.25 million is to be contributed by the major non-Indian water users, in amounts described in Section 313(b)(1)(B). A matching contribution is authorized to be appropriated by the Federal government in Section 313(b)(1)(A).

Additional appropriations to the Fund, to cover such contingencies as delay in completion of construction, additional operation and maintenance charges, or costs of acquisition and delivery of alternative sources of water are authorized to be appropriated by Congress in paragraphs 3(B) and 3(C) of Section 313(b).

Section 313(c) protects the corpus of the trust and provides for accumulation of income for a period of time equal to the earlier of 10 years from the date of enactment of this title or the time required to complete construction of the main project works of the CAP.

Section 313(d) provides for the termination of the Fund and the return of monies contributed in the event the waiver and release executed by the Tribe does not take effect, or the dismissal of the specified lawsuits is not accomplished within 3 years.

The settlement contained in this title is intended to provide an assured, annual supply of wet water to the Tribe to enable the Tribe to achieve economic self-sufficiency and stability. It is anticipated that the sources of water identified and specified in this title will be adequate, in most years, to provide a full supply of wet water to the Tribe and that such water will, in fact, be delivered.

There may, however, be occasional shortages of water and in some years the Secretary may be required to pay damages. In such years, some or all income generated by the Fund may not be needed to pay water delivery costs and will then be available to the Secretary to make payments for damages under Sections 304(c) and 305(d). Section 313(f) provides that, in any given year, the Secretary may not make payments which exceed the amounts available for expenditures from the Fund. In the event available income on the Fund is insufficient in any given year to pay damages under Sections 304(c) and 305(d), Congress in that year or any subsequent year may appropriate additional monies for the Fund for such purposes, or the Tribe may seek a determination of damages in excess of payments made in the Court of Claims under section 1505 of Title 28, U.S.C.

Sec. 314

The purpose of Section 314 is to provide for compliance with the Congressional Budget and Impoundment Control Act of 1974, which provides for a fiscal year only to the extent and in such amounts as provided in appropriations acts. The prohibition on "making payments" in advance of appropriations acts, for example, does not affect the creation of any liability against the United

States under any provision of this title; it merely provides that in case of any such liability, payments made in satisfaction of the liability would be contingent upon appropriation of the necessary funds.

Sec. 315

Section 315 provides that this title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982."

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HOUSE OF REPRESENTATIVES

REPORT
No. 97-857

DETERMINATION OF SPACE TO BE PROGRAMED IN MEDICAL FACILITIES OF THE ARMED FORCES FOR MILITARY RETIREES AND THEIR DEPENDENTS

SEPTEMBER 23, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NICHOLS, from the Committee on Armed Services,
submitted the following

COMPLETED

REPORT

[To accompany H.R. 3278]

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[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 3278) to amend title 10, United States Code, to provide additional standards for determining the amount of space to be programed for military retirees and their dependents in medical facilities of the uniformed services, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That section 1087 of title 10, United States Code, relating to the programing of space for care of retired members and their dependents, is amended—

(1) by inserting "(a)" before "Space for"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "The maximum amount of space that may be so programed fora facility is the greater of—

"(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

"(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

"(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

"(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

"(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and

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other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

"(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act).

"(c) The hospitals at the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy shall have space for inpatient and outpatient care for persons covered by sections 1074(b) and 1076(b) of this title. The amount of such space shall be programed in accordance with subsection (a).".

SEC. 2. (a) Chapter 55 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1091. Hospitals at service academies

"Subject to the availability of appropriations, there shall be a hospital at the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.".

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1091. Hospitals at service academies.".

SEC. 3. The amendment made by paragraph (2) of the first section of this Act shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.

EXPLANATION OF COMMITTEE AMENDMENT

The amendment, which strikes out all after the enacting clause, is a substitute for the bill as introduced. The amendment makes technical changes in the language of the bill.

PURPOSE

The purpose of H.R. 3278 is twofold. First, the bill would provide additional criteria that may be used in determining the amount of space to be programmed for military retirees and their dependents in military medical facilities.

Second, it would state that, subject to the availability of appropriations, there should be a hospital at each of the three military academies.

SUMMARY OF PROVISIONS IN THE BILL

Sizing criteria

Under current law and policy, the size of military medical facilities is based on the workload for active duty personnel and their dependents. Section 1087 of title 10, United States Code, provides that any space in military medical facilities programmed for retirees and their dependents will be limited to that required to meet teaching and training requirements.

The bill would provide an additional criterion for the incremental sizing for retirees and their dependents: space so programmed would be based on the most cost-effective provision of inpatient and outpatient care for retirees. The determination of cost-effectiveness would be based on an economic analysis, including a life-cycle cost comparison of various alternatives for the activity. Thus, the cost of providing medical care to the current beneficiary population under both CHAMPUS (Civilian Health and Medical Program of

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the Uniformed Services) and Medicare[1] would be weighed against the capital outlays and other expenditures necessary to construct and operate a military medical facility large enough to provide such care in-house. The committee anticipates that the analysis conducted would review a number of options ranging from total in-house care to the recapture of varying portions of the current CHAMPUS and Medicare workloads.

The decision reached on the appropriate sizing level would be based upon the workload of the facility and would be constrained by the projected availability of medical and dental staff for that facility.

Military academies

The bill would provide, subject to the availability of appropriations, for the operation of a hospital at the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Air Force Academy.

Further, space at the service academy hospitals could be programmed based on the expanded sizing criteria embodied in the bill.

Effective date

The bill would apply to construction projects for which the first funds would be appropriated in fiscal year 1984 or later.

BACKGROUND AND DISCUSSION

By current statute and policy, the amount of space to be included in military medical facilities is limited to that needed for active duty members and their dependents, plus any additional space the service Secretaries determine necessary to meet teaching and training requirements. The increase in sizing provided for teaching and training requirements is the only additional space that may be programmed for military retirees and their dependents, unless there is a critical shortage of community medical facilities in an area with a large concentration of retirees. Included as a part of Public Law 89-614, the Military Medical Benefits Amendments of 1966, the teaching and training requirements criterion has not been amended since that time.

The implementing regulations issued by the Department of Defense in 1968, provide that the services may add an additional 5 percent in non-teaching hospitals or 10 percent in teaching hospitals to the space otherwise planned in order to provide health care for retirees and their dependents. This Department of Defense directive has remained basically unchanged since its issuance despite criticism from both the Congress and the General Accounting Office.

By contrast, the character of the military health care delivery system and the composition of the eligible beneficiary population have changed during the intervening years. Reflecting a similar trend in the civilian sector, an increasing degree of military medical care is provided on an outpatient, rather than an inpatient,

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[1] CHAMPUS eligibility terminates when an individual becomes entitled to medicare coverage at age 65 or through disability.

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basis. Hospitals built several decades ago were designed principally to support lengthy hospital stays. Newer facilities are instead configured for a variety of outpatient work stations and ancillary support services. Thus, to conform to modern medical practice, a growing number of older facilities must be replaced. Under the existing sizing criteria, many of these replacement facilities will be smaller, in some cases considerably smaller, than the older hospitals they will replace.

How does this compare to the beneficiary population to be served? The size of the active duty force has declined significantly as a result of the reductions in manning made in the wake of the termination of hostilities in Vietnam. At the same time, the retiree population has increased and today represents a growing component of the military medical care system beneficiary population. For example, two decades ago, over 80 percent of the beneficiaries of Air Force health care were active duty personnel and their dependents. Today, approximately 50 percent of all beneficiaries living within Air Force military treatment facility catchment areas are retired members, their dependents and survivors.

There is often neither sufficient space nor adequate staff in many military medical facilities to provide care to all of those eligible. First priority is given to active duty personnel and then, on a space available basis in declining order of priority, to active duty dependents, retirees, their dependents, and survivors. Dependents, retirees, and survivors unable to obtain care in uniformed services facilities are entitled to use CHAMPUS, the Civilian Health and Medical Program of the Uniformed Services. Established in 1966 by Public Law 89-614, the Civilian Health and Medical Program of the Uniformed Services pays hospital and doctor bills for care in the civilian community on a cost-shared basis. Active duty dependents receive greater reimbursement of medical expenses than retirees and their dependents.

With the escalation of costs within the medical sector of the economy over the past decade, the budget for CHAMPUS has increased significantly in recent years and will in fiscal year 1982 be slightly in excess of $1 billion. That compares to just over $500 million during the mid and late 1970's.

In current practice, these burgeoning CHAMPUS costs are not weighed in the decision-making process on the size of a military medical facility to be constructed. In fact, when a substantially older facility is replaced, there is often a decrease in the number of available beds.

The Air Force Regional Hospital at MacDill Air Force Base, Florida, is a good example of the dilemma besetting service health care planners. Under study as a future military construction project, the MacDill hospital presently has 75 operating beds. A new facility, following current Department of Defense regulations, would be restricted to 48 beds, a decline of approximately one-third. Ironically MacDill Air Force Base is located in the fast-growing Tampa, Florida, area, an increasingly popular haven for retirees from around the nation. With a total Department of Defense beneficiary population eligible for military health care within that area projected to be 120,000 by fiscal year 1989, a 48-bed facility will be able to meet only a small portion of requirement for care. The remainder will be absorbed by the increasingly costly CHAMPUS program.

This anomaly has not escaped notice. In July 1976 the House and Senate Committees on Appropriations, in their conference report on the military construction appropriations bill for fiscal year 1977, gave the Department of Defense policy guidance concerning several issues related to hospital sizing. The report directed the department to review its planning guidelines for providing beds in military hospitals for retirees, their dependents, and survivors. The report further indicated that Congress would consider providing beds in new military hospitals for beneficiaries now receiving care under CHAMPUS provided that the overall cost of such in-house treatment was less costly to the government.

Despite the congressional guidance, the Department of Defense, as previously noted, has not modified its regulations on sizing military hospitals. A new draft regulation still under review contains criteria similar to the original 1968 instruction with respect to the allocation of space for retirees.

GENERAL ACCOUNTING OFFICE REVIEW

At the request of the Chairman of the Appropriations Committee of the House of Representatives, the General Accounting Office reviewed the hospital sizing methodology used by the Department of Defense. A General Accounting Office report, issued in December 1980 criticized the Defense Department's sizing policies and indicated that the services do not apply the same criteria to both inpatient and outpatient facilities. GAO suggested that the law be modified to provide additional criteria in sizing military medical facilities so that other factors such as the life-cycle cost of the facility could be considered in making a final determination of size. This bill is the result of committee review and refinement of the GAO recommendations.

The General Accounting Office examined several recent studies prepared by private consulting firms that compare the cost of medical care in military hospitals and clinics with the cost in civilian facilities. The studies, one for the San Diego Naval Hospital and the other for the Fort Carson Army Hospital, compared the life-cycle costs of several options for providing care to military beneficiaries in each hospital's area. Life-cycle costs for a project alternative are derived by determining the costs of construction, operation, and other expenses incurred by the Federal government each year over an assumed 20-year time period and discounting the costs using a 10-percent interest rate to arrive at present value costs.

GAO further reviewed a sensitivity analysis conducted by the consulting firm for the San Diego Naval Hospital. This sensitivity analysis verified that the comparative cost results would not change significantly with reasonable variations in the factors and assumptions used in the study, such as the 20-year economic life, the rate of escalation of health care costs, personnel or CHAMPUS costs, project construction or capital costs, and the discount rate.

The General Accounting Office report indicates general agreement with the approach and methodology used by the consultant. GAO further discussed the San Diego and Fort Carson studies with cognizant health care planners within the Department of Defense and the services and found that they concurred with the overall conclusion of the studies, namely, that medical care provided by the two military hospitals analyzed would be considerably less costly to the Federal government than care by local civilian providers. These findings are consistent with past studies conducted by the Department of Defense and the services.

The General Accounting Office report concluded, in summary, that "these two studies indicate that treating DOD beneficiaries in the military hospitals and clinics can, in some cases, be more cost effective to the government than paying for their care in civilian facilities. They also supply strong evidence that DOD can save money in the long run by adopting a new policy to size hospitals to treat all beneficiaries when proper economic analysis shows this to be most cost effective."

STAFFING CONSTRAINTS

A determination of the capability of the military services to staff a military medical facility must be an integral part of the decision-making process on the most cost-effective size for that facility. With the expiration of the doctor draft at the end of the Vietnam war, the services encountered serious difficulty in attracting and retaining sufficient health care professionals to staff existing medical facilities and to provide care to the current beneficiary population. Congress has subsequently taken several actions that have reversed the decline in the number of military physicians, principally the improvement of the Armed Forces Health Professions Scholarship Program, the establishment of the Uniformed Services University of the Health Sciences, and the enactment of the Uniformed Services Health Professionals Special Pay Act of 1980. As a result, the services are currently able to attract a sufficient number of general practitioners, but shortages of those specialists who can command high salaries in private practice will persist for some period of time.

In view of the shortfalls experienced in the very recent past, the ability of the services to provide sufficient physicians and other medical staff must be a principal determinant in the ultimate sizing of a military medical facility. The General Accounting Office report recommends that projected staffing act as a major constraint on sizing decisions. The committee concurs and has incorporated this recommendation in the bill.

The committee expects that staffing estimates will be based on a realistic time frame, such as the 5-year projections included in current planning documents, the Program Objective Memorandum (POM). In response to committee questioning, both Department of Defense and service officials have indicated that 5-year projections can be made with a substantial degree of accuracy. For example, the majority of future military physician accessions are already in the pipeline through participation in the Armed Forces Health Professions Scholarships Program and through attendance at the Uniformed Services University of the Health Sciences.

The committee further expects that regulations promulgated by the Secretary of Defense relative to sizing projections will be prepared in consultation with the individual services Secretaries.

ECONOMIC ANALYSIS

All of the various legislative proposals previously submitted, including the General Accounting Office's recommendations, had based the determination of cost-effectiveness on a life-cycle cost analysis of the project. Under the terms of the bill, the determination of cost-effectiveness would be made on the basis of an economic analysis, including a life-cycle cost analysis.

After reviewing several of the economic analyses prepared by private consultants, the committee decided to expand the criterion to an overall economic analysis, of which the life-cycle cost analysis is an integral part. The life-cycle costs for each of the alternatives considered represent the present value of the stream of costs to be incurred each year during the life cycle of the alternatives being considered. These costs include the initial capital cost and recurring annual operating costs, personnel costs, transition costs of moving in and occupying the new facility, and CHAMPUS costs in the catchment area of the facility. These costs will vary both in magnitude and timing depending on size of the facility.

By contrast, in determining the effectiveness of the various alternatives, current analyses weigh such additional factors as the operations-related benefits associated with the efficient operation of the military health care delivery system and health planning criteria-related benefits associated with Public Law 93-641, the National Health Planning and Resources Development Act of 1974. The latter portion of the analysis, for example, would ensure that health planners have fully reviewed and considered the interaction of the proposal facility with other hospitals in the area, both Federal and non-Federal. Such considerations should be included as part of the proposed economic analysis.

The committee intends that the Secretary of Defense, in consultation with the service Secretaries, exercise flexibility in determining the appropriate degree of economic analysis required, based upon the size, cost, and complexity of the facility involved.

MOBILIZATION CAPABILITY

An additional and very important benefit will accrue from more flexible sizing criteria for military hospitals: enhanced mobilization capability. During peacetime, the resources of the military health care delivery system are devoted to meeting the medical needs of the current beneficiary population, active duty personnel, dependents, retirees, and survivors. The military medical care system exists for another, more critical reason: provision of wartime care.

The military services must have the capability to treat combat casualties in the battle theater, in interim staging facilities overseas, and in medical facilities within the United States. Military medical planners have long despaired that the downsizing of medical facilities that often results from current policy could bear bitter fruit in the event of substantial wartime casualties. Military hospitals may be unable to respond to the requirement for rapid expansion in the number of beds necessary to receive the wounded in any appreciable numbers.

The Department of Defense has testified that the enactment of this legislation would contribute further to ongoing efforts to improve the direct care system's mobilization capabilities by slowing the rate of loss of beds in Department of Defense hospitals. The Acting Assistant Secretary of Defense for Health Affairs has testified that, unless current law and policy are changed, the military departments will lose approximately 20 percent of the hospitals beds currently existing in the direct care system over the next twenty years.

The impact of this trend on mobilization is obvious.

MILITARY HOSPITALS AT THE THREE MILITARY ACADEMIES

Problems with the current sizing criteria are highlighted when focus is placed on specific examples.

Currently, only two of the three military academies have a hospital. In 1979, as a result of a shore establishment realignment study, the aging hospital at the U.S. Naval Academy was downgraded to an outpatient clinic. Midshipmen requiring hospitalization must travel considerable distances to the Naval Regional Medical Center in Bethesda or to Kimbrough Army Hospital at Fort Meade, Maryland. In veiw of the distance to these military facilities, emergency cases must normally be taken to Anne Arundel Community Hospital.

Under the current sizing criteria, Navy health care planners assert that the construction of a replacement hospital at the Naval Academy, though desirable from the perspective of instilling institutional norms in the midshipmen, would not be cost-effective. The additional flexibility that this bill would provide would enable the Navy to consider the current cost of CHAMPUS care for the large retiree population in the Annapolis area and, thereby, construct a slightly larger, more cost-effective facility.

The bill would require, subject to the availability of appropriations, that there be a hospital at each of the three military academies and that additional space for retirees be programmed in accordance with the expanded criteria envisioned in the legislation. This will have a favorable impact on the midshipmen and result in the cost-effective provision of medical care in that area.

USE OF REALISTIC INFLATION PROJECTIONS

The long-term economies envisioned in this legislation will not materialize unless realistic rates of inflation in the medical sector of the economy are used in preparing life-cycle cost estimates as a part of the economic analyses. Specifically, the factors used to project costs of providing military medical care or CHAMPUS cost should be based on actual experience in recent years with respect to the costs of hospital care, physician services, prescriptions, supplies, and other reimbursable expenses. It would be counterproductive to the purpose of this legislation to use a lower cost projection than estimates based on historical experience would dictate solely because budget planners hope, without substantiating evidence, for a decline in medical costs at some point in the future.

As a case in point, the committee has recently considered a request by the Department of Defense to reprogram $100 million from other operation and maintenance accounts into CHAMPUS to offset the shortfall for the remainder of fiscal year 1982. Although part of the shortfall is due to a greater rate of CHAMPUS usage than originally projected, the major portion of the shortfall, according to testimony presented by Defense officials, results from a medical inflation rate substantially greater than anticipated in the budget submission. The fiscal year 1982 budget submission assumed an eight percent inflation increase: Actual experience for hospital costs has been a 20 percent rate of increase instead. Physician services have increased by 11 percent; prescriptions, equipment, supplies, and other ancillary services, by 12.4 percent. Thus, $69.4 million of the $100 million shortfall is based on unanticipated medical cost growth alone. If the budget submission had been based on a more realistic cost growth factor, based on extrapolations of the actual experience of the past five years, for example, much of this shortfall would not have occurred.

The committee's intent in approving this legislation is to reduce expenditures in the years ahead by ensuring that medical care for military beneficiaries is provided in the most cost-effective manner. This process will be frustrated if the regulations prescribing procedures for the economic analysis do not require the use of realistic inflation factors. The committee, therefore, directs the Secretary of Defense, in issuing regulations implementing the provisions of this legislation, to ensure that such regulations require the use of realistic inflation factors, based on historical data within the medical sector of the economy, in the preparation of life-cycle cost comparisons and economic analyses.

DEPARTMENTAL DATA

The need for legislation such as is embodied in H.R. 3278 was discussed during a hearing conducted jointly by the Subcommittee on Military Personnel and Compensation and the Subcommittee on Military Installations and facilities. The testimony provided by representatives of the Department of Defense was generally supportive of the provisions contained in the bill.

The following delineates the Defense Department's analysis of the impact of the legislation in the near term:

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., September 20, 1982.

Hon. WILLIAM NICHOLS,
Chairman, Subcommittee on Military Personnel and Compensation, Committee on Armed Services, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In reply to your staff's request for an estimate by the Office of the Assistant Secretary Defense (Health Affairs) as to the cost impact of amending legislation pertaining to sizing DoD medical facilities for retirees and their dependents—Section 1087, title 10, U.S.C., the enclosed information is forwarded.

Sincerely,

VERNON MCKENZIE,
Deputy Assistant Secretary of Defense.

FINDINGS OF ECONOMIC ANALYSES PERFORMED FOR MAJOR HOSPITAL CONSTRUCTION PROJECTS PROPOSED FOR FISCAL YEAR 1982 To FISCAL YEAR 1986

[Dollars in millions]

	Fiscal year 1985, Travis	Fiscal year 1983, Carswell	Fiscal year 1982, Carson	Fiscal year 1982, Wright-Patterson	Fiscal year 1986, Madigan
Current number of beds operated	290	115	140	285	409
Existing law:					
Beds	[1]204	77	155	234	[1]301
Capital costs	$166	$42	$77	$106	$253
Annual operating costs	$874	$503	$374	$395	$731
Transition costs	$1	$0.9	$0.6	$0.8	$1.6
Total lifecycle costs to the Government	$1,041	$546	$451	$502	$986
Lifecycle analysis:					
Beds	290	168	195	332	477
Capital costs	$202	$66	$105	$115	$388
Annual operating costs	$626	$451	$331	$383	$646
Transition costs	$2	$1	$0.7	$1.3	$2.1
Total lifecycle costs to the Government	$830	$518	$436	$499	$1,046
Total lifecycle benefit to the Government	$211	$28	$14	$3	($60)

[1] Subsequent to the findings of these reports, the department accepted evidence that the exception provision of section 1087 pertaining to large concentrations of retirees for which a critical shortage of beds is projected was applicable to the Travis and Madigan projects. As a result, Travis was authorized to be designed for 295 beds and Madigan was authorized to be designed for 378 beds.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would modify the existing criteria for determining the amount of space that may be programmed for retirees and their dependents in uniformed services medical and dental facilities. These criteria are found in section 1087 of title 10, United States Code. Section 1 of the bill would designate the existing language in section 1087 of title 10 as subsection (a) and replace the existing limitations with the new criteria.

Under the new criteria, the amount of space above that required for active duty personnel and their dependents that may be programmed for a facility would be limited to the greater of two calculations. The first determination, specified in clause (1) of the new subsection (a), would be based on the additional amount of space that would be required to support teaching and training of health-care professionals. The second determination, specified in clause (2) of the new subsection (a), would be based on the additional amount of space required to provide the most cost-effective inpatient and outpatient care for retirees and their dependents. Uniformed services facilities could be constructed or modified to include space up to the largest additional amount determined in clause (1) or (2).

Section 1 of the bill would also add a new subsection (b) to section 1087 of title 10. The new subsection would require in para-

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graph (1) that consideration be given in the determination made in subsection (a) to the projected inpatient and outpatient workloads for retirees and their dependents. In addition, paragraph (1) would require that consideration be given in the determination made in subsection (a) to the staffing resources that are expected to be available to the facility. The staffing resources should be determined in accordance with regulations prescribed by the Secretary of Defense and should be based on realistic projections of the number of physicians and other health-care providers that can reasonably be expected to be assigned to or be available to the facility. It is intended that the regulations governing projections of staffing capabilities and the actual projections of health-care providers be developed through coordination with the individual service Secretaries.

The new subsection (b) would also require in paragraph (2) that the determination of the amount of space required to provide the most cost-effective care for retirees and their dependents under clause (2) of subsection (a) be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility. Consideration should also include all reasonable and available medical care treatment alternatives (including treatment under CHAMPUS and under Medicare).

Section 1 of the bill would also add a new subsection (c) to section 1087. The new subsection (c) requires that any hospital at the United States Military Academy, the United States Naval Academy or the United States Air Force Academy have additional space programmed for retirees and their dependents in accordance with the new subsection (a).

Section 2 of the bill would add a new section 1091 to the end of chapter 55 of title 10, United States Code. The section 1091 would require, subject to the availability of appropriations, a hospital at the United States Military Academy, the United States Naval Academy and the United States Air Force Academy.

Section 3 of the bill would restrict application of the amended section 1087 (related to the determination of additional space in military medical facilities for care for retirees and their dependents) to facilities for which funds for construction (or major alteration) are first appropriated for a fiscal year after fiscal year 1983.

COMMITTEE POSITION

The Committee on Armed Services on September 21, 1982, a quorum being present, approved H.R. 3278, with amendment, by voice vote.

FISCAL DATA

Pursuant to the House rules, the five-year cost projection of the legislation as estimated by the Department of Defense, the Congressional Budget Office, and the Committee on Armed Services follow.

DEPARTMENTAL COST ESTIMATE

The Department of Defense was unable to provide an estimate of the outlays resulting from the provisions contained in H.R. 3278 for fiscal year 1983 and the four following fiscal year. As outlined under the Departmental Data section printed earlier in the report, the Defense Department did submit an analysis of the impact that the legislation could have on five hospital construction projects over the next five years.

The Department of Defense indicates that projects in the fiscal year 1983 to 1985 military construction program are sized in accordance with existing law. Therefore, the department states that this legislation, if enacted, would have no appreciable impact on these program years.

Projects in the fiscal year 1986 and 1987 time frame may be increased in scope as a result of the enactment of H.R. 3278. Due to budgetary constraints, the department states that any increase in project costs would be absorbed by deferring constructing of other projects into subsequent years.

With respect to the effect on CHAMPUS costs, the department projects that cost savings in CHAMPUS would occur no sooner than fiscal year 1989; however, defense estimates that these savings would ultimately fully offset additional near term capital expenditures.

The legislation envisions that economic analyses would be prepared on new or replacement military medical facilities. Because such analyses have been required by Congressional committee reports and DOD instructions since 1978, however, the department states that no new costs would be attributable to the performance of the studies.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(3)(C), Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget Act of 1974 is included hereafter.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, SEPTEMBER 22, 1982

1. Bill number: H.R. 3278.
2. Bill title: To provide additional standards for determining the amount of space to be programmed for military retirees and their dependents in medical facilities of the uniformed services, and for other purposes.
3. Bill status: As ordered reported by the House Armed Services Committee on September 21, 1982.
4. Bill purpose: H.R. 3278 revises the manager in which DOD determines allowable hospital space, including the preparation of studies to determine space needs, and allows for a military hospital at each of the three Service academies.
5. Cost estimate:

[By fiscal year, in millions of dollars]

Function 050	1983	1984	1985	1986	1987
Estimated authorization				25.2	0.1
Estimated outlays				4.4	10.1

6. Basis of estimate: Authorizations are estimated as indicated below. All estimated authorizations are assumed to be appropriated before each fiscal year.

The bill requires that for all uniformed services hospital facility construction for which funds are appropriated after fiscal year 1983, the capacity is to be determined by the greater of the space required: (a) to support teaching and training requirements; or (b) to provide the most cost-effective inpatient and outpatient care to retired members or their dependents who are eligible for such care. An economic analysis that includes life-cycle costing is required in order to determine cost-effectiveness. Facility inpatient and outpatient workload, based on the needs of eligible retired members and their dependents, as well as medical and dental staff availability are to be considered in making the determination of space to be programmed.

Studies required under this legislation vary in cost from $100,000 to no cost. Each economic analysis is estimated by DOD to cost $100,000 when done by a contractor. There is no new cost to studies done inhouse by DOD personnel, because such work will be done with existing personnel and other resources. Three economic analysis may be done within the next five years. No determination has been made concerning who will do the work. If done by outside contractors, the estimated cost would be $300,000. Teaching and training space studies are already done under current law. Workload studies will add no cost because DOD already gathers the required data for other uses, such as war time hospital capacity studies. Staff availability studies are carried out as part of DOD's regular budget development process to determine manpower requirements and meet end-strength limitations.

The bill also contains a provision that requires that a hospital facility be constructed at each service academy, if funds are available. Only the Naval Academy does not already have a hospital. DOD estimates that a Naval Academy hospital would require a total of $25 million for construction. This amount would be requested in the fiscal year 1986 budget. Because the bill applies only to facilities for which funds for construction are first appropriated after fiscal year 1983, none of the facilities now programmed by DOD will be affected by this bill. Each of the two facilities presently programmed by DOD for after 1983 is already exempt from space limitations as a result of provisions in existing law, therefore no new costs will occur as a result of this provision. Because DOD cannot request construction funds for hospital facilities without 35 percent of the design work being completed, an approximately 18 month process, DOD does not anticipate any further hospital facility construction requests between 1983 and 1987.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

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COMMITTEE COST ESTIMATE

Pursuant to clause 7, Rule XIII of the Rules of the House of Representatives, the committee attempted to determine outlays resulting from the bill for fiscal year 1983 and the four following fiscal years.

The committee generally concurs with the estimate of the Congressional Budget Office. However, the committee notes that the added incremental cost $14.5 million over the next 5 years would be subject to the Congressional authorization and appropriations process. Thus, Congress would in all probability offset the slight added expenditure by eliminating or deferring other projects of lesser priority.

INFLATION-IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee examined the possible inflationary impact of the bill. It is the belief of the committee that the enactment of this legislation will not have an inflationary impact on the economy of the United States.

OVERSIGHT FINDINGS

With reference to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Operations in regard to this matter.

With reference to clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee finds and recommends that the legislation be enacted pursuant to its oversight responsibilities.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART II—PERSONNEL

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CHAPTER 55—MEDICAL AND DENTAL CARE

Sec.

1071. Purpose of sections 1071-1087 of this title.

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1091. Hospitals at service academies.

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§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. [The amount of space so programed shall be limited to that amount determined by the Secretary concerned to be necessary to support teaching and training requirements in uniformed services facilities, except that space may be programed in areas having a large concentration of retired members and their dependents where there is also a projected critical shortage of community facilities.] *The maximum amount of space that may be so programed for a facility is the greater of—*

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by section 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by section 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act).

(c) The hospitals at the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy shall have space for inpatient and outpatient care for persons covered by section 1074(b) and 1076(b) of this title. The amount of such space shall be programed in accordance with subsection (a).

* * * * * * *

§ 1091. Hospitals at service academies

Subject to the availability of appropriations, there shall be a hospital at the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

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BILL SUMMARY

PURPOSE

The purpose of H.R. 3278 is twofold. First, the bill would provide additional criteria that may be used in determining the amount of space to be programmed for military retirees and their dependents in military medical facilities. In addition to the current statute permitting an incremental increase based on teaching and training requirements, the bill would permit space to be programmed based on the most cost-effective method of heath care delivery to the beneficiaries served by that facility, as determined by an economic analysis that includes a life-cycle cost comparison of sizing alternatives. The ultimate sizing decision would, additionally, be based upon the workload and the projected availability of medical staff for the facility.

Second, it would state that, subject to the availability of appropriations, there should be a hospital at each of the three military academies.

FISCAL DATA

The Congressional Budget Office five-year cost estimate projects increased outlays of $4.4 million in fiscal year 1986 and $10.1 million in fiscal year 1987.

The committee generally concurs in the estimate of the Congressional Budget Office, however, the committee notes that the slight increase in cost is expected to be offset by the deferral of items of lesser priority into later year budgets.

DEPARTMENTAL DATA

The Department of Defense has testified favorably on provisions generally similar to those contained in the bill.

COMMITTEE POSITION

The Committee on Armed Services on September 21, 1982, a quorum being present approved H.R. 3278, with amendment, by voice vote.

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